

TEACHERS' RETIREMENT BOARD

REGULAR MEETING

SUBJECT: Hempstead – Consideration of New
Proposed Decision

ITEM NUMBER: 4

ATTACHMENT(S): 1

ACTION: X

DATE OF MEETING: February 8, 2001

INFORMATION:

PRESENTER(S): Lynda Bridges/ Ron Mealor

BACKGROUND:

Attached is a new Proposed Decision rendered by the Administrative Law Judge (ALJ) in the Hempstead matter. It is before you as a result of the Committee rejecting the first Proposed Decision and remanding the matter back to the ALJ to hear additional evidence from the employer which came to light after the first hearing and to reconsider his analysis and determination regarding equitable estoppel using the more modern case law.

FACTS:

All the facts are set forth in the new Proposed Decision beginning on page 2. The facts that are critical to this discussion and decision are:

1. Ms. Hempstead was considered by her employer to be a regular contract teacher until her last days of regular employment in the spring of 1998.
2. From 1989-1990 when she began teaching until her death she accumulated 2.548 years of service credit with CalSTRS.
3. Having undergone surgery and with a medical release to work, Ms. Hempstead attempted to work as a substitute, and, in fact, worked two or three days ending October 2, 1998 at which time she advised her employer she could not continue the assignment.
4. In November 1998 she was called as a substitute a few times but was unable to work.
5. On August 13, 1999, the Santa Clara County of Education submitted CalSTRS Form 0554, the Employment Termination and Sick Leave Report which listed October 2, 1998 as the Employment Termination Date and Last Day of Compensation for Ms. Hempstead.
6. At all times during this period and at the time of her death the employer considered her as “an inactive substitute, but still employed.”
7. In January 1999, Ms Hempstead renewed her teaching credential and advised her employer she was moving to the Sacramento area.
8. On February 25, 1999, she was diagnosed with a terminal malignant meningioma.

9. In early March 1999, approximately 7 months after Ms. Hempstead last performed any creditable service for which she received creditable compensation, Dr. Hempstead on behalf of his mother telephoned CalSTRS' "800" number and spoke to a CalSTRS representative regarding his mother's eligibility for the death benefit. Describing the nature of his mother's substitute employment and her terminal condition, he was assured that his mother, not having terminated from employment, continued to qualify for the death payment inasmuch as she was still "actively employed." [The term "actively employed" is used in the Member Handbook to describe a member who is employed for which creditable compensation is paid.]
10. In April 1999, Dr. Hempstead again telephoned CalSTRS to ascertain and be assured of his mother's continuing qualification for the death payment. He was again assured of her continuing qualification and advised to have Ms. Hempstead file a Beneficiary Designation form. The form was completed and hand delivered by Dr. Hempstead on May 6, 1999. The CalSTRS representative who took the form volunteered to determine whether Ms. Hempstead was still "active" and, checking her computer terminal, confirmed that his mother was still "active."
11. On May 9, 1999, Ms. Hempstead died.
12. Shortly after his mother's death, Dr. Hempstead, the designated beneficiary, applied for the death benefit. His application was denied on the basis that his mother was not "actively employed" at the time of her death and more than four months following her last creditable service (October 1998) as required by statute.

ISSUE:

The issue involved is whether or not a death payment is payable.

LAW:

For a death payment to be payable the requirements of Education Code Section 23851(a) must be met. This Section states, in pertinent part:

"A death payment ...shall be paid to the beneficiary...if the member died during any one of the following periods:

- (1) While in employment for which creditable compensation is paid, or
- (2) Within four months after termination of creditable service or termination of employment, whichever occurs first."

The new evidence from the employer stating that Ms. Hempstead was considered to be “employed” at the time of her death and not “terminated” from employment did not change the ALJ’s determination regarding qualification under the law for the death payment. Although the employer may have considered her “employed” at the time of her death, Ms. Hempstead last performed “creditable service” for which she received “creditable compensation” almost 7 months prior to her death. She therefore did not die “while in employment for which creditable compensation [was] paid” which is required to satisfy (Section 23851(a)(1)). Additionally, the new evidence did not satisfy subsection (a)(2) of 23851. As the ALJ finds, the effect of the disjunctive language of this subsection functions to provide two distinct chronological events: (1) a period of four months from the termination of employment, and (2) a period of four months following the termination of creditable service. As the evidence shows Ms. Hempstead did not terminate her employment nor was considered by the employer to have terminated her employment. Therefore she would qualify only if her death occurred within four months after the termination of creditable service. Her last creditable service was in October 1998, well outside the four-month requirement. Therefore Ms. Hempstead does not qualify for the death payment under Section 23851 of the Education Code.

EQUITABLE ESTOPPEL:

Failing to qualify under the law for the death payment, Dr. Hempstead argues that the equitable remedy of estoppel should be imposed against CalSTRS. He argues that his reliance on the advice given by CalSTRS staff that his mother qualified for the death payment caused him and his mother not to take action (return to employment) to insure she did in fact qualify for the benefit. CalSTRS should therefore be estopped from denying the issuance of the death payment.

In the new Proposed Decision the ALJ reverses his determination as to the applicability of the principle of equitable estoppel against CalSTRS. In the first Proposed Decision the ALJ made the finding that “negligent conduct will not rise to support a determination of equitable estoppel.” As acknowledged in footnote 26 on page 7 of the new Proposed Decision this was incorrect. Equitable estoppel can arise from negligence that is “careless and culpable.” As a matter of law this degree of negligence is “equivalent to intent to deceive” required to find estoppel.¹

¹ The court in Campbell v. Scripps Bank, (2000) 78 Cal.App.4th 1328, citing San Diego Mun. Credit Union v. Smith (1986) 176 Cal.App.3d 919, states that a finding of estoppel is chiefly a question of fact and that there must be (1) a representation or concealment of material facts (2) made with knowledge, actual or virtual, of the facts, (3) to a party ignorant, actually and permissibly, of the truth, (4) with the intent, actual or virtual that the latter act upon it, and (5) the party must have been induced to act upon it.

In the new Proposed Decision beginning with the third full paragraph on Page 6 the ALJ applies the correct case law and readily finds all the elements satisfied for estoppel, except for “intent to deceive.” Therein he finds that the CalSTRS staff, after being advised of the true facts regarding Ms. Hempstead’s employment status incorrectly advised the Hempsteads who were ignorant of the true facts and relied on the advice as to eligibility for the death payment and did not take any action that could have caused the benefit to be payable.

As to the element of “intent to deceive” the ALJ finds that the staff that advised the Hempsteads did not intentionally deceive them but were negligent to the degree that their actions amounted to “careless or culpable conduct” which amounts to evidence of an intent to deceive.” As the ALJ correctly points out, the appellate court observed in Campbell that actual fraudulent intent is not necessary to raise estoppel, but negligence that is careless and culpable is as a matter of law equivalent to intent to deceive.

The ALJ’s rationale for finding that the negligence of the staff was “careless and culpable” is also found in case law. Beginning with the first full paragraph on page 7 of the new Proposed Decision the ALJ points out that under case law negligence by one who “purports to advise and direct” vis-à-vis “merely to inform and respond to inquiries”, the dissemination of inaccurate information will not excuse negligence and, particularly where “a confidential relationship” exists “as in the case of an applicant for a pension and a board” [cite omitted] or “if the claimant is one who purports to have no knowledge or training which would aid him in determining his rights and the public agency purports to be informed and knowledgeable in these matters” estoppel shall lie. [Cite omitted] Therefore with the finding that the CalSTRS staff was negligent to the degree of being careless and culpable amounting to intent to deceive, the ALJ determines that CalSTRS should be estopped from not paying the death payment.

ALTERNATIVES:

The Committee has the following options as to the new Proposed Decision:

1. Adopt the Proposed Decision as it reads with a few minor non-substantive changes, or
2. Reject the Proposed Decision in its entirety and hear the matter itself based upon the transcript. [Although technically the matter could also be referred back to the ALJ, this option would not appear appropriate at this juncture.]

DECISION:

In staff's opinion the crucial determination the Committee must make is if it agrees with the ALJ's determination that the staff was careless and culpable in its advice to the Hempsteads in light of case law that would support such a finding when a fiduciary relationship exists between a pension system and its members and incorrect advice is negligently given by the pension system. It should be kept in mind that, as the ALJ points out in footnote 7 on page 4 of the new Proposed Decision, the facts surrounding the contacts by Dr. Hempstead and the information provided by him and the responses by staff are based on his sworn statements. CalSTRS cannot confirm or deny the statements made. Staff would submit, however, that we believe semantics played a large part in the confusion surrounding the advice given as to eligibility and has taken the following actions to help prevent confusion in the future:

1. The language in the Member Handbook dealing with eligibility for the death payment has been amended to state the law as written in Section 23851. This will solve the confusion as to what "actively employed" means.
 2. Staff answering questions by members and their representatives will be advised by memorandum of the exact requirements for eligibility under Section 23851 and the semantics involved.
- .